Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Conference On Accounting Issues	)	WC Docket No. 02-269
	)	
2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II	)	CC Docket No. 00-199
	)	
Jurisdictional Separations Reform and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
Local Competition and Broadband Reporting	)	CC Docket No. 99-301

REPLY COMMENTS OF BELLSOUTH

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TABLE OF CONTENTS

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REPLY COMMENTS OF BELLSOUTH

BellSouth Corporation, for itself and its wholly owned affiliated companies (collectively "BellSouth"), submits the following reply comments in response to comments filed in the above referenced proceeding.[1]

I. Introduction and Summary

In the *Notice* for these comments, the Commission reiterated the purpose for the establishment of the Federal-State Joint Conference on Accounting Issues ("Joint Conference"). Its stated goal is to "provide a forum for an ongoing dialogue between the Commission and the

[1] *Federal-State Joint Conference on Accounting Issues, et.al.,* WC Docket No. 02-269, *et al., Notice of Proposed Rulemaking*, FCC 03-326, (rel. Dec. 23, 2003) ("*Notice*").

states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."[2] And, the driving force behind the formation of the Joint Conference was the apparent concern by state public service commissions ("PSCs") over the actions taken by the Commission in its analysis and revision of some of the regulatory accounting requirements prescribed by Part 32 of the Commission's rules. These state PSCs expressed concern that the Commission's rule changes could affect their ability to collect and analyze financial and accounting data that they need for various state purposes. It is therefore odd that only one state PSC – Wisconsin – filed comments in this proceeding. While some will argue that the Joint Conference collectively represents the states on these matters, this argument rings hollow considering that only three PSCs filed comments in the initial public notice and the Joint Conference is represented by only five state commissioners. This leads to the conclusion that only a handful of state PSCs actually desire the implementation of the recommendations of the Joint Conference. Based on the record before it, the Commission should not accept a broad-brush claim that a majority of the state PSCs endorse the Joint Conference's recommendations.

Indeed, the Commission has an obligation to make regulatory decisions – especially those imposing burdensome and costly requirements on a segment of the industry – based on substantive evidence supporting its decision. The state PSCs' decisions not to enter into a substantive discussion in this proceeding represent a clear mandate that the Commission should not alter the findings in the *Phase 2 Order*,[3] except for those issues properly presented in the Joint ILECs' Petition for Reconsideration.[4]

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2 *Id.* ¶ 2.

3 *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, *et al.*, CC Docket No. 00-199, *et al.*, *Report and Order in CC Docket Nos. 00-199, 97-*

The Commission must also acknowledge that this proceeding grew out of the biennial review requirement of Section 11 of the Telecommunications Act of 1996 ("1996 Act").[5] Section 11 contains an unambiguous mandate to the Commission to review and eliminate needless regulation. Under Section 11, the Commission has a statutory obligation to review its regulations to see if they are still required in the public interest. Unless a regulation is necessary for that purpose, it should be eliminated. In evaluating whether to implement the Joint Conference's recommendations, the Commission must therefore adhere to the Section 11 standard. Likewise, the Joint Conference's recommendations should also be evaluated in light of the clear deregulatory intent of the 1996 Act. Specifically, Section 10 of the 1996 Act requires that the Commission forbear from applying any regulation or provision of the statute that is not necessary to ensure that "the charges, practices, classifications, or regulations" of a carrier "are just and reasonable."[6] Sections 10 and 11 are complementary provisions enacted by Congress to

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212, and 80-286 and Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911 (2001) ("*Phase 2 Order*").

4 *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2,* Petition of BellSouth, SBC and Verizon for Reconsideration of Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286 (filed Mar. 8, 2002) ("Joint PFR").

5 47 U.S.C. § 161. AT&T's inaccuracies and mischaracterizations begin in the Introduction section of its comments. It first derides BellSouth and the other ILECs for suggesting that the Commission should not only reject the recommendations made but should be looking to eliminate other needless accounting rules. AT&T should check the genesis of this proceeding, which was a biennial review. As discussed herein, biennial reviews were created for the specific purpose of eliminating needless regulation.

6 47 U.S.C. § 160. Section 10 forbearance also requires a finding by the Commission that the statute or regulation in question "is not necessary for the protection of consumers" and that forbearance "is consistent with the public interest." In making its public interest determination, Section 10(b) requires the Commission to consider "whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."

ensure that regulation does not impede the operation of market forces as competition emerges in the telecommunications industry.

Moreover, Section 11 requires the Commission to review all regulations that apply to the operations of *any provider* of telecommunications services. Thus, the Commission must undertake its evaluation of the recommendations considering the continuing necessity for any regulation on any provider of telecommunications services, not just large LECs. The statute itself refers to the existence of competition as evidence that the public interest no longer requires detailed regulation. Section 10(b) directs the Commission to forbear when doing so will "promote competitive market conditions." Forcing certain carriers to bear unnecessary administrative costs that do not apply to their competitors damages, rather than promotes, competitive market conditions.[7]

II. The Commission Must Look to the Purpose of the Regulatory Accounting Rules and Not Regulate Based on the Improper Conduct of Entities Not Subject to Those Rules

Some of the comments filed in this proceeding amount to little more than re-hashed arguments glued together by innuendo and speculation. In fact, the vast majority of the companies with reported accounting scandals that took place in the early part of the 2000s – such as Enron, WorldCom and Adelphia – are not subject to the accounting regulations faced by ILECs. Furthermore, the regulatory accounting requirements that are currently in place and the recommendations that the Joint Conference suggests should be made to increase this regulation would not have prevented the improper and/or illegal acts that these companies perpetrated or the scandals that resulted from them. Thus, it is completely unclear how any reference to these

[7] BellSouth does not advocate any form of the continued or increased regulation; however, if the Commission believes that certain regulation is in the public interest, such regulation should apply to all providers of telecommunications services.

scandals should be relevant to whether the Commission fulfills its obligations under Section 11 of the Telecommunications Act of 1996 ("1996 Act"). Yet, AT&T does not miss an opportunity to point to these scandals as justification for the Commission to implement each of the Joint Conference's recommendations.[8] The Commission cannot ignore the efforts it expended over the past four years in analyzing and amending the accounting and reporting rules through its biennial review. These efforts were the product of significant thought and analysis on the matter. Nothing in the comments supports the Commission's implementation of the recommended changes, especially considering that the result will be a reversal of well-reasoned changes made pursuant to the Commission's statutory mandate to "repeal or modify" needless regulation and the waste of numerous resources, both the Commission's and the carriers'.

Consequently, the Commission's effort in the *Phase II Order* should not be second-guessed based solely on a few sensational failures in the financial accounting system brought on by those who intentionally disregarded accounting principles and the laws requiring compliance with those principles. Moreover, the Commission cannot lose sight of the fact that the regulatory accounting prescribed by the Commission was never intended to – and does not – protect against those financial accounting failures that have recently occurred. Accordingly, any recommendations that the Commission contemplates implementing must be made with the realization that changes to regulatory accounting will not provide any protection against financial accounting problems. The large ILECs are the only entities subject to the full panoply of Commission accounting and reporting rules. As discussed above, the largest accounting scandal in history was perpetuated by WorldCom, an IXC that is not subject to the Commission's accounting and reporting rules. Thus, while BellSouth does not advocate increased regulation, if

8 *See, e.g.*, AT&T Comments at 3, 12, 21.

the Commission were to accept the accounting scandals as a basis for increasing accounting and reporting rules, these rules must address the entities that caused the scandals.

AT&T attempts to exploit the accounting scandals and ignores the changes that have occurred in the industry that have diminished the need for much of the regulation that currently exists. As BellSouth explained in its comments in this proceeding and in the Joint Comments filed in the *Phase 3* proceeding, price cap regulation along with competition in the market has eliminated most of the reasons regulatory accounting was implemented. Indeed, most of the consumer pricing and cross-subsidy issues, which are common themes expressed as reasons for keeping regulation, have been greatly diminished by price cap regulation and certainly should not be used as justification for increasing the burdensome accounting and reporting requirements, including the affiliate transaction rules.

One commenter, AT&T, also attempts to force a need for accounting and reporting requirements in its continued attempts to have the Commission abandon price cap regulation and return to rate of return regulation. AT&T first does this by bringing into this proceeding the arguments it espoused in its petition for rulemaking regarding special access reform.[9] Just as AT&T's arguments in that proceeding do not support the undoing of the past twelve years of price regulation, they likewise do not support a continued need for burdensome accounting and reporting regulation. In fact, the opposite is true. In support of its petition, AT&T claims that the rates of return for special access are excessive and that the historical returns are conclusive proof that the LECs possess market power.[10] As BellSouth discussed in its comments in the

[9] AT&T Corp. Petition for Rulemaking To Reform Regulation Of Incumbent Local Exchange Carrier Rates For Special Access Services, RM No. 10593 (filed Oct. 15, 2002) ("AT&T Petition").

[10] AT&T Petition at 8.

AT&T Petition proceeding, however, the special access rates of return relied upon by AT&T are meaningless in a price cap regulatory regime, and, more importantly, are dependent upon arbitrary cost allocation and separations processes that have not kept pace with the rapid technological and market changes.

AT&T also attempts to show a need for the continued accounting and reporting requirements based on the request by ILECs to amend their tariffs to allow them more flexibility in charging deposits for wholesale customers.[11] AT&T cannot deny that ILECs lost significant amounts of money in the WorldCom bankruptcy and remain vulnerable to additional losses as more carriers suffer the effects of the economic downturn that has pummeled the entire industry. ILECs stand to lose the most because of their wholesale requirements in the provision of unbundled network elements and their access market. AT&T cannot reasonably argue a need for continued burdensome regulation requiring regular reporting of information that the ILECs can provide at the Commission's request. The Commission did use information from ARMIS in its decision regarding the tariff language on deposits; however, that does not justify continued, or additional, accounting and reporting regulatory requirements. Just because a broken clock is right twice a day does not rationalize leaving the clock broken.

NASUCA argued, without providing supporting reasons, that the Commission should increase accounting and reporting requirements to support the states in determining UNE prices.[12] The comments filed by the Joint ILECs in the *Phase 3* proceeding demonstrated that the existing accounting and reporting requirements are more than sufficient to support the states

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11 AT&T Comments at 7.

12 NASUCA Comments at 6.

in their monitoring of UNE prices.[13] These prices are not based on historical accounting costs, but instead are based on forward-looking costs of a hypothetical efficient network. Consequently, historical costs are at best marginally relevant in their calculation.[14] Furthermore, UNE studies already require a greater level of detail than is required by Part 32 or ARMIS reporting. There are certainly no reasons to require the large ILECs to incur costs to comply with additional accounting and reporting requirements when data are already available through separate studies that are being provided on an as-needed basis.

III. Specific Recommendations

A. Recommendations Regarding the Chart of Accounts

Many of the Joint Conference's recommendations on accounts received very little support from any entity other than AT&T. In fact, no commenter provided any support for creating loop and transport asset accounts at this time.[15] Conversely, the ILECs provided valid

[13] *See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and 3; Local Competition and Broadband Reporting,* CC Docket Nos. 00-199 & 99-301, Joint Comments of BellSouth, SBC, Verizon, Qwest, Frontier, and CBT, (filed Apr. 8, 2002) ("Joint Comments").

[14] As AT&T stated in another proceeding, "ARMIS data are records of the Bells' book or embedded costs, maintained as required by the Commission's uniform system of accounts. These data are irrelevant to any rational determination of forward-looking costs . . . ." *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Reply Comments of AT&T Corp. at 38 (filed Jan. 30, 2004).

[15] In its comments BellSouth pointed out that the Part 32 Chart of Accounts is not the proper place to track loop and transport investment because of the problems associated with units of property. In this discussion on page 20 of its comments, BellSouth stated that "loop and interoffice facilities primarily ride the same cable and both types of traffic often ride together on a single fiber strand." BellSouth now realizes that the use of the term "interoffice" does not properly reflect the technical configuration of the network. Instead, the phrase should have read as "loop and transport, including interoffice and local channel, sometimes ride the same cable and both types of traffic may ride together on a single fiber strand." The sentence goes on to discuss the difficulty recording "loop and interoffice facilities in separate accounts" as well as reporting a technician's time to either "loop or interoffice facilities when working on the cable." In each instance where the term "interoffice" was used, it likewise should have stated "transport,

reasons for not creating any new accounts. This lack of supporting comments clearly demonstrates that the Joint Conference's recommended accounts are not needed.

AT&T generally contends that ILEC accounts should not be eliminated because they are needed for universal service.[16] None of the accounts recommended by the Joint Conference are used by the nonrural universal service mechanism. For example, even if a new optical switching account were added, that account balance could not be used to represent network assets in the USF nonrural model because the model requires the current cost of purchasing a facility to be used, not the booked cost.[17] Furthermore, the USF nonrural model calculates its own depreciation expense because historical booked depreciation expense cannot be used. Any general expense information from which overhead ratios are developed can be obtained from either Class B accounts, GAAP accounting or through special studies on an as-needed basis.[18] The nonrural universal service mechanism can continue to be calculated without adopting any of the Joint Conference recommendations for the chart of accounts.[19]

There is adequate support for achieving some of the chart of account recommendations by other means:

Directory Revenue. As BellSouth fully discussed in its comments, the Commission should not undo its decision to eliminate directory revenue as an account. There is no need for this account at the federal level and any state that needs this information can obtain it specifically from a carrier. The Wisconsin PSC illustrated this point in its comments. While the Wisconsin

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including interoffice and local channel." BellSouth apologizes for any confusion this may have caused.

16 AT&T Comments at 7.

17 *See* BellSouth Comments at 6, n.11.

18 *See* Verizon Comments at 23.

19 *See* Joint Comments, Attachment C.

PSC stated that it would prefer Account 5230 be reinstated, it also indicated that it had prescribed a data retention requirement to obtain this information.[20] The same requirement could be made by any state that still needs Account 5230 revenue information from any ILEC. Reinstatement is not justified.

Wholesale/Retail Split. Nothing in the comments gives good reason for requiring a wholesale/retail split of services expense (Account 6620). Contrary to AT&T's claims that "no party has identified any particular burden associated with these reporting requirements,"[21] the Joint PFR[22] fully demonstrates the extensive, costly and unnecessary burden on ILECs that would occur if these wholesale/retail splits are required. While it continues to support the elimination of the wholesale/retail split, BellSouth contends that the most the Commission should consider is the Joint Conference's recommendation that any wholesale and retail breakdown would be limited to Account 6623 and be reported as a percentage on ARMIS 43-02.[23]

Depreciation. The depreciation accounts should not be reinstated. The reasons set forth by the few entities that commented on these accounts are not persuasive. The Rural Utilities Service ("RUS"), an entity that provides "financing and technical services to . . . . rural local exchange carriers,"[24] supported restoring depreciation expense accounts 6561-6565 and the associated depreciation and amortization reserve accounts. This advocacy, however, seems

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20 Wisconsin PSC comments at 6.

21 AT&T Comments at 17.

22 Joint PFR at 2-6.

23 The Joint Conference also recommends that account 6621 and 6622 be consolidated into one account; however, BellSouth supports reporting each of the accounts separately and not consolidating them if the Commission follows the Joint Conference's recommendation.

24 RUS Comments at 1.

misplaced, as the reinstatement of these accounts would only apply to Class A carriers, none of whom receive loans from RUS.

The Wisconsin PSC likewise supported the reinstatement of these accounts but also explained that it continues to receive this information on a state level from Class B carriers, who do not maintain these accounts on a federal level.[25] This confirms what BellSouth has discussed throughout these proceedings – that state PSCs can obtain information they need on a state level and no federal requirement is necessary.

Switching software. While some commenters supported the establishment of a new account for switching software,[26] they offer no reason why the same information could not be provided to state commissions as needed, instead of creating a Part 32 account. Indeed, BellSouth discussed that this information is currently collected in a subsidiary record category for account 2690. It makes no sense to require carriers to go to the expense of establishing a new account when the information is readily available upon request.

B. Recommendations Regarding Affiliate Transactions

Only a very few commenters expressed opinions on the affiliate transaction recommendations made by the Joint Conference. Of those that discussed affiliate transaction issues, only AT&T and Wisconsin PSC supported any of the recommendations. Indeed, no party filing comments supported the recommendations that the Commission (a) eliminate the $500,000 exemption from obtaining estimated fair market value for asset transfers; (b) eliminate the

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25 Wisconsin PSC Comments at 9.

26 *See* AT&T Comments at 19; NASUCA Comments at 10; *compare* Wisconsin PSC Comments. Although Wisconsin PSC suggests the magnitude of switching software might warrant an account, *see id.* at 10, it also recognizes that accounts and subaccounts are not necessary for information to be provided. *Id.* at 5 (in lieu of account/subaccount, Wisconsin PSC created an informal reporting requirement or required retaining information for a 6-year period).

centralized services exception from estimated fair market value comparison;[27] or (c) continue to apply the affiliate transaction rules for transactions that involve the transfer of assets or services to or from a non-regulated affiliate and non-regulated operations within the BOC.[28] As Sprint discussed, the affiliate transaction rules implemented in the *Phase II Order* were not deferred. No problems have surfaced since the rules became effective. That reason alone is adequate grounds not to adopt the Joint Conference's recommendations for changing existing rules.[29] And, it is important to recognize that no commenter supported these recommendations but several commenters opposed them. Accordingly, the Commission should reject adopting these affiliate transaction recommendations.

Elimination of Ceiling and Floor Valuation. This recommendation is very puzzling. First, under price cap regulation the value that an ILEC charges or collects for goods or services from an affiliate will not directly affect prices. Thus, allowing the rule to continue has no real impact. Second, even if ILECs were under rate-of-return regulation, the ceiling and floor rule benefits subscribers as the ILEC will always get the benefit of the transaction. Thus, BellSouth is confused as to why the Joint Conference would make this recommendation.

AT&T once again tries to muddy the waters with its thinly veiled reference to Enron-type accounting scandals involving affiliate transactions as a justification for the Commission to reinstate the old rule.[30] AT&T conveniently does not explain that the transactions that were the

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27 The Wisconsin PSC even agrees with the argument of many of the ILECs that "[e]xamination of fair market value for such services may needlessly translate into increased costs for the ILEC, and, perhaps ultimately, ratepayers." Wisconsin PSC Comments at 17.

28 *See id.* at 18 (indicating that it "does not have jurisdiction over nonregulated-to-nonregulated transactions," and that "this issue can be addressed under Wisconsin law if it becomes a problem.").

29 *See* Sprint Comments at 3-8.

30 AT&T Comments at 21.

subject of Enron's accounting scandal were not transactions for the sale of goods and services from one affiliate to another, but instead involved off-balance sheet financing of illegally created partnerships. Had Enron been subject to the Commission's affiliate transaction rules, allowing a floor and ceiling valuation would not have prevented Enron from committing its illegal acts. AT&T alluding to this type of accounting scandal only demonstrates its penchant for dissembling facts contrary to its position. The Commission should reject the Joint Conference's recommendations on this item. Likewise, nothing in the comments provides sufficient reasons for adopting any of the Commission's recommendations on affiliate transactions and the Commission should follow the guidance of the majority of the commenters and reject all of the Joint Conference's affiliate transactions recommendations.

C. Recommendations Regarding Reporting

AT&T and Sprint opposed eliminating broadband information from ARMIS 43-07 and moving the information to the Local Competition and Broadband Data Gathering Program ("Form 477"). Despite the reasons given for this opposition, the actual motive for seeking the reporting of broadband information on the ARMIS 43-07 is that if the reporting was moved to Form 477 then AT&T and Sprint would be required to begin reporting such information. Clearly, Form 477 is the better format for gathering this information. It includes all competitive providers instead of only the four large ILECs. There can be no valid reason for requiring the reporting of broadband information on the ARMIS 43-07.

IV. Conclusion

For the reasons set forth in BellSouth's Comments and in these Reply Comments, the Commission should not alter the regulatory relief granted in the *Phase 2 Order*, nor should it add any regulations recommended by the Joint Conference in the *Notice*. The Commission should, however, grant the Joint PFR regarding certain issues in the *Phase 2 Order*. As set forth in the Joint PFR, implementation of the new regulations created by the *Phase 2 Order* is extremely burdensome but provides no real benefit to the Commission or the state PSCs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 17th day of February 2004 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS** by electronic filing and/or by placing a copy of same in the United States Mail, addressed to the parties listed on the attached service list.

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